

# Exhibit A

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

**In the Matter of**

**The Kroger Company**

**and**

**Albertsons Companies, Inc.**

**Docket No. 9428**

**EXPEDITED JOINT MOTION TO CONTINUE THE RECESS OF THE EVIDENTIARY  
PORTION OF THE PART 3 ADMINISTRATIVE HEARING**

Pursuant to 16 C.F.R. § 3.41(b), Complaint Counsel and Respondents The Kroger Company and Albertsons Companies, Inc. (“Respondents” and together with Complaint Counsel, “the Parties”) jointly move to extend the current recess in this case until 21 days after the final resolution of the related federal preliminary injunction case captioned *FTC, et al. v. Kroger Co. & The Albertsons Cos.*, No 3:24-cv-00347-AN (D. Or.). Continuing the present recess will not prejudice this Court’s ability to discharge its duties for several reasons. First, the federal court informed the Parties that it would act expeditiously to issue its ruling on the motion for preliminary injunction, and thus a continued recess would be of reasonable duration and would not unduly delay resolution of this case. Second, a continued recess would allow the Parties to react as appropriate to the federal court’s ruling, and thus facilitate significant streamlining and allow for a more orderly hearing in this proceeding, as well as minimize the expense and burden on both the Parties and non-parties.

## ARGUMENT

The Parties jointly request expedited consideration of this Motion because this Court ordered the Parties to propose a schedule for resuming the Part 3 evidentiary hearing after the conclusion of the federal hearing. *See* July 12, 2024 Order at 3. A short continuance will allow both the Parties and non-parties—who have been diligently preparing for and presenting evidence at the federal hearing and are now preparing post-hearing filings to file in that court—to prepare for the Part 3 hearing in this Court in a more orderly fashion, as well as to react as appropriate to any implications of the federal court’s forthcoming ruling that may be relevant to this proceeding.

On July 8, 2024, Respondents filed a motion to recess in this case, arguing that “[t]hree separate regulators have initiated four separate proceedings challenging the transaction” at issue in the administrative proceeding before this Court and requesting a recess under 16 C.F.R. § 3.41(b) “until the trials in the parallel actions are complete.” July 8, 2024 Respondents’ Motion to Recess the Evidentiary Portion of the Part 3 Administrative Hearing (“Respondents’ Recess Motion”) at 1-2. The Court granted the motion in part, recessing this case “until after the completion of the federal injunction hearing.” July 12, 2024 Order at 3. However, the Court denied Respondents’ request for a recess “until after the conclusion of all state injunction trials,” and thus ordered the Parties to “propose a schedule for resuming the Part 3 hearing” following “the conclusion of the [federal] hearing.” *Id.* Closing arguments in the federal injunction hearing concluded on September 17, 2024, and the Parties’ post-hearing filings—including proposed findings of fact and conclusions of law—are due on September 27, 2024.

The Parties have met and conferred since the conclusion of the federal hearing and, given this Court’s previous ruling on Respondents’ Recess Motion, now request that this Court

continue the current recess until 21 days after the final resolution of the federal proceeding. Such a continued recess is appropriate under 16 C.F.R. § 3.41(b) because it would be only a “brief interval[] of the sort normally involved in judicial proceedings”; namely, a short pause to await the federal court’s pending ruling, which may narrow—or even entirely resolve—the dispute between the Parties. Continuing the present recess would also conserve this Court’s—and the Parties’—time and resources by providing the Parties the opportunity to streamline and focus their arguments and thus avoid any inefficiencies, such as proffering testimony or evidence that may be rendered irrelevant or duplicative by the federal court’s forthcoming ruling. This outcome also would reduce the burden on non-parties who may otherwise be compelled to provide testimony in the Part 3 hearing before this Court.

### CONCLUSION

For the foregoing reasons, the Parties respectfully and jointly request that the Court exercise its discretion under 16 C.F.R. § 3.41(b) to continue the recess in this administrative hearing, as well as all related pre-hearing deadlines, until 21 days after the final resolution of the federal proceeding.

Dated: September 24, 2024

Respectfully submitted,

s/ Barrett J. Anderson

Barrett J. Anderson  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
Telephone: (202) 326-2237  
Email: banderson1@ftc.gov

*Counsel Supporting the Complaint*

s/ Mark A. Perry

Mark A. Perry  
Luke Sullivan  
Weil Gotshal & Manges LLP  
2001 M Street NW, Suite 600  
Washington, DC 20036  
Telephone: (202) 682-7511  
Email: mark.perry@weil.com

Luna Barrington  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10053  
Telephone: (212) 310-8421

Matthew M. Wolf  
Sonia K. Pfaffenroth  
Arnold & Porter Kaye Scholer LLP  
601 Massachusetts Avenue, NW  
Washington, DC 20001  
Telephone: (202) 94-6831

*Counsel for Respondent The Kroger  
Company*

s/ Enu A. Mainigi

Enu A. Mainigi  
Jonathan B. Pitt  
Beth A. Stewart  
A. Joshua Podoll  
Williams & Connolly LLP  
680 Maine Avenue SW  
Washington, DC 20024  
Telephone: (202) 434-5000

Michael G. Cowie  
Dechert LLP  
1900 K Street, NW  
Washington, DC 20006  
Telephone: (202) 261-3300  
Email: mike.cowie@dechert.com

*Counsel for Respondent Albertsons  
Companies, Inc.*

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**In the Matter of**

**The Kroger Company**

**and**

**Albertsons Companies, Inc.**

**Docket No. 9428**

**STATEMENT OF CONFERENCE PURSUANT TO PROVISION 4 OF THE  
SCHEDULING ORDER**

Pursuant to Provision 4 of the Scheduling Order, Complaint Counsel and Respondents submit this statement in support of their Joint Motion to Continue the Recess of the Evidentiary Portion of the Part 3 Administrative Hearing. The parties conferred in good faith and file this motion jointly.

Dated: September 24, 2024

Respectfully submitted,

s/ Barrett J. Anderson

Barrett J. Anderson  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
Telephone: (202) 326-2237  
Email: banderson1@ftc.gov

*Counsel Supporting the Complaint*

s/ Mark A. Perry

Mark A. Perry  
Luke Sullivan  
Weil Gotshal & Manges LLP  
2001 M Street NW, Suite 600  
Washington, DC 20036  
Telephone: (202) 682-7511  
Email: mark.perry@weil.com

Luna Barrington  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10053  
Telephone: (212) 310-8421

Matthew M. Wolf  
Sonia K. Pfaffenroth  
Arnold & Porter Kaye Scholer LLP  
601 Massachusetts Avenue, NW  
Washington, DC 20001  
Telephone: (202) 94-6831

*Counsel for Respondent The Kroger  
Company*

s/ Enu A. Mainigi  
Enu A. Mainigi  
Jonathan B. Pitt  
Beth A. Stewart  
A. Joshua Podoll  
Williams & Connolly LLP  
680 Maine Avenue SW  
Washington, DC 20024  
Telephone: (202) 434-5000

Michael G. Cowie  
Dechert LLP  
1900 K Street, NW  
Washington, DC 20006  
Telephone: (202) 261-3300  
Email: mike.cowie@dechert.com

*Counsel for Respondent Albertsons  
Companies, Inc.*

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

**In the Matter of**

**The Kroger Company**

**and**

**Albertsons Companies, Inc.**

**Docket No. 9428**

**[PROPOSED] ORDER ON EXPEDITED JOINT MOTION TO CONTINUE THE  
RECESS OF THE EVIDENTIARY PORTION  
OF THE PART 3 ADMINISTRATIVE HEARING**

Upon consideration of the Expedited Joint Motion to Continue the Recess of the  
Evidentiary Portion of the Part 3 Administrative Hearing, it is hereby

ORDERED that the Motion is GRANTED.

ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date:



### **CERTIFICATE OF SERVICE**

I hereby certify that on September 24, 2024, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580  
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to:

Michael B. Bernstein  
Matthew Wolf  
Sonia Pfaffenroth  
Joshua Davis  
Michael Kientzle  
Jason Ewart  
Yasmine Harik  
Christina Cleveland  
Arnold & Porter Kaye Scholer LLP  
601 Massachusetts Ave, NW  
Washington, DC 20001  
Telephone: (202) 942-5227  
Email: michael.b.bernstein@arnoldporter.com  
Email: matthew.wolf@arnoldporter.com  
Email: sonia.pfaffenroth@arnoldporter.com  
Email: joshua.davis@arnoldporter.com  
Email: michael.kientzle@arnoldporter.com  
Email: jason.ewart@arnoldporter.com  
Email: yasmine.harik@arnoldporter.com

John Holler  
Arnold & Porter Kaye Scholer LLP  
250 West 55<sup>th</sup> Street  
New York, NY 10019  
Telephone: (212) 836-7739

Email: john.holler@arnoldporter.com

Mark Perry  
Luke Sullivan  
Weil, Gotshal & Manges LLP  
2001 M Street, NW, Suite 600  
Washington, DC 20036  
Telephone: (202) 682-7511  
Email: mark.perry@weil.com  
Email: luke.sullivan@weil.com

Luna Barrington  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
Telephone: (212) 310-8421  
Email: luna.barrington@weil.com

Bambo Obaro  
Weil, Gotshal & Manges LLP  
201 Redwood Shores Parkway  
Redwood Shores, CA 94065  
Telephone: (650) 802-3083  
Email: bambo.obaro@weil.com

*Counsel for The Kroger Company*

Enu A. Mainigi  
Tyler Infinger  
Adam J. Podoll  
Thomas Ryan  
Williams and Connolly LLP  
680 Maine Avenue SW  
Washington, DC 20024  
Telephone: (202) 434-5000  
Email: emainigi@wc.com  
Email: tinfinger@wc.com  
Email: apodoll@wc.com  
Email: tryan@wc.com

Edward Hassi  
Debevoise & Plimpton LLP  
801 Pennsylvania Avenue, NW  
Washington, DC 20004

Telephone: (202) 383-8135  
Email: thassi@debevoise.com

Michael Schaper  
Shannon R. Selden  
J. Robert Abraham  
Natascha Born  
Jaime Freilich-Fried  
Tom E. Buckley  
Marie Ventimiglia  
Debevoise & Plimpton LLP

66 Hudson Boulevard  
New York, NY 10001  
Telephone: (212) 909-6737  
Email: mschaper@debevoise.com  
Email: srselden@debevoise.com  
Email: jrabraham@debevoise.com  
Email: nborn@debevoise.com  
Email: jmfried@debevoise.com  
Email: tebuckley@debevoise.com  
Email: msventim@debevoise.com

Mike Cowie  
James Fishkin  
Dechert LLP  
1900 K Street, NW  
Washington, DC 20006  
Telephone: (202) 261-3339  
Email: mike.cowie@dechert.com  
Email: james.fishkin@dechert.com

*Counsel for Albertsons Companies, Inc.*

s/ Barrett J. Anderson  
Barrett J. Anderson  
Federal Trade Commission  
Bureau of Competition  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
Telephone: (202) 326-2237  
Email: banderson1@ftc.gov

*Counsel Supporting the Complaint*